

DALAM MAHKAMAH TINGGI SHAH ALAM  
DALAM NEGERI SELANGOR DARUL EHSAN, MALAYSIA  
**RAYUAN SIVIL NO: 12A-983-2010**

**ANTARA**

- 1. SEGI OBJEKTIF (M) SDN BHD**  
(No. Syarikat: 236717 – X)
- 2. BUKIT MERAH RESORT SDN BHD**  
(No. Syarikat: 390047 – M) ... PERAYU/DEFENDAN

**DAN**

**RUSLAN BIN RAMLI**  
(No. Polis: I/14670) ... RESPONDEN/PLAINTIF

[DALAM MAHKAMAH SESYEN DI KLANG  
DALAM NEGERI SELANGOR DARUL EHSAN, MALAYSIA  
**SAMAN NO. 52-1252-2009**

**ANTARA**

**RUSLAN BIN RAMLI**  
(No. Polis: I/14670) ... PLAINTIF-PLAINTIF  
DAN

- 1. SEGI OBJEKTIF (M) SDN BHD**  
(No. Syarikat: 236717 – X)
- 2. BUKIT MERAH RESORT SDN BHD**  
(No. Syarikat: 390047 – M) ... DEFENDAN-DEFENDAN]

## **GROUND OF JUDGMENT**

### **Introduction**

[1] The appeal by the Appellant (Defendant) emanates from the Klang Sessions Court that was given on 1.10.2010 which allowed a summary judgment of RM250,000.00 for the Respondent (Plaintiff) and further ordered the Appellant to pay the sum of RM360.00 daily to the Respondent commencing from 13.3.2009 until the delivery of the vacant possession of the properties to the Respondent.

### **Brief Facts**

[2] The facts leading to this appeal gathered from the Plaintiff's Statement of Claim and the written submissions of both counsels can be summarised as follows:

- (a) The parties are, the Plaintiff, an individual having its address at No. 125, Lengkok Sri Siantan 51, Taman Sri Andalas 41200 Klang Selangor and the Defendants are the 1<sup>st</sup> Defendant and the 2<sup>nd</sup> Defendant. The 1<sup>st</sup> Defendant is a company established under the Companies Act 1965 and having its registered address at No. 19, Jalan PJU 8/5H, Perdana Business Centre, Bandar Damansara Perdana, 47820 Petaling Jaya, Selangor and a business address at Bukit Merah Laketown, Jalan Bukit Merah, Simpang Empat 34400 Semanggol Perak. Meanwhile, the 2<sup>nd</sup> Defendant is a company established under the

Companies Act 1965 and having its registered address at No. 19, Jalan PJU 8/5H, Perdana Business Centre, Bandar Damansara Perdana, 47820 Petaling Jaya, Selangor and business address at Bukit Merah Laketown, Jalan Bukit Merah, Simpang Empat 344400 Semanggol Perak.

- (b) The 1<sup>st</sup> Defendant is the main shareholder of the 2<sup>nd</sup> Defendant.
- (c) The Plaintiff claimed that sometime in May 2002, the Defendants offered for sell to the Plaintiff their apartment units known as Laketown Serviced Apartment (pages 38 – 64 of Record of Appeal) where the apartment units are to be rented back to the Defendants at the rental charges not less than 8% of the purchase price of the apartment unit (clause 16 of Sale and Purchase Agreement, page 44 of Record of Appeal). The Plaintiff claimed that the Defendants made a representation that the Defendants will continue to rent the apartment unit at the rental charges of 8% of the purchase price.
- (d) The Plaintiff claimed that on or around 5.6.2002, the Plaintiff having trusted the Defendants and having relied on the Defendants' representation, entered into a sale and purchase agreement (the SAP) with the 1<sup>st</sup> Defendant to purchase one apartment unit known as Laketown Serviced Apartment Parcel No. F/208, Tingkat 2, Blok f with the built up area of 478 sq feet built on H.S.(D) KN 1182, No. P.T.603, Mukim Gunung Semanggol, Daerah Kerian, Negeri Perak (the apartment) for

the price RM176, 700.00 (Section 4, First Schedule of the SAP) which includes furniture furnished in the apartment (Exhibit "RR-2", pages 33 – 60 of Record of Appeal).

- (e) The Plaintiff claimed that on or around 5.6.2002, the Plaintiff entered into the tenancy agreement with the 2<sup>nd</sup> Defendant for three years period (the Tenancy Agreement) (Exhibit "RR-3", pages 61 – 69) commencing from the expiry of the four months for the full payment of the purchase price or the expiry of four months from the date of certificate of fitness issued, whichever is the later. The Plaintiff claimed that the agreed rental charges was RM12, 722.49 per annum which is 8% net of the purchase price that is of RM159,030.00.
- (f) The Plaintiff claimed that on or around March 2004, upon the Defendants request and in adhering the Tenancy Agreement, the Plaintiff delivered vacant possession of the apartment. The Plaintiff claimed that on 1.4.2007, the Defendants issued a notice to the Plaintiff that the Tenancy Agreement had expired and offered to extend the tenancy on a monthly basis at the lower rate of RM331.31. The Plaintiff claimed that he rejected the Defendants' offer, having feeling cheated for believing that the Defendants will continue to rent on same rental charges.
- (g) The Plaintiff claimed that there was an effort to get his apartment keys from the 2<sup>nd</sup> Defendant but the Defendants failed to return the keys. The Plaintiff claimed that on

13.3.2009, the Plaintiff instructed his solicitors to issue a demand notice for the vacant possession and the rental charges of 710 days amounting to RM255, 600.00 at the daily rate of RM360.00 (pages 132-133 of Record of Appeal).

- (h) The Defendants on the other hand admitted that the apartment was sold to the Plaintiff and that the Defendants rented the apartment but denied that they made the representation to the Plaintiff for continuous tenancy (pages 17 – 18 of Record of Appeal). The Defendants claimed that the Plaintiff waited for two years after the expiry of the Tenancy Agreement on 1.4.2007 to make a demand through the Plaintiff's solicitors, allowing the 2<sup>nd</sup> Defendant to continue renting the apartment for two years and receiving the rental charges paid by the 2<sup>nd</sup> Defendant. The Defendants denied that the Plaintiff made an effort to collect the apartment keys and denied receiving demand notice of 13.3.2009.
- (i) The Plaintiff stated that at the Klang Sessions Court, the Plaintiff after the filing of Appearance and Statement of Defence by the Defendants on 17.11.2009 and 18.2.2010 respectively, filed an application for summary judgment pursuant to the old **Order 26A of Rules of High Court 1980** and served the Affidavit in Support to the Defendants' solicitors on 4.5.2010. The Defendants failed to reply and after one month filed an application for leave for abridgement of time to file for Affidavit in Reply but was expunged by the Sessions Court.

- (j) After the Klang Sessions Court's Judgment, the Defendants filed an appeal before this Court, registered as Shah Alam High Court Civil Appeal No.12-983-2010. Subsequently, the Defendants then filed a stay of execution against the Klang Sessions Court's decision of 1.10.2010 (the said Judgment). The High Court on 2.3.2011, allowed the stay of execution of the Judgment.
- (k) The Defendants on the other hand claimed that after the stay of execution was obtained, for unknown reason there was no development of the appeal but on 3.8.2017, the Defendants received a winding up notice issued by the Plaintiff.
- (l) The Defendants claimed that there was no hearing of the appeal fixed since the order for stay was granted and that parties were instructed to reconstruct the record of appeal. There is no ground of judgment written by the Session Judge who had passed on.

### **Defendants' submission**

[3] Briefly the learned Defendants' counsel submitted that the Plaintiff initiated his action against the Defendants for failure to deliver the key of the Plaintiff's properties. The Defendants submitted that the appeal on summary judgment derived from the SAP and there was a Tenancy Agreement where the apartment was rented out to the Defendants who then rented it out to third parties (clause 1.1 on sublet page 67 of Record of Appeal) as in the letter of offer dated 1.4.2007 (paragraph 6, pages 129 - 130 of Record of Appeal).

[4] The Defendants averred that there was a 166 days of delay and the tenancy charges is RM 12, 722.40 per year of which the rental is RM 1,060.00 per month, and all are not pleaded by the Plaintiff. It is also submitted that the Plaintiff's claim for RM250,000.00 is exorbitant and his claim should be confined to the Tenancy Agreement where the rate of RM 360.00 daily is not only exorbitant but is not substantiated by any evidence.

[5] The Defendants' counsel submitted that the Defendants had objected in the Affidavit in Reply which was expunged from the record due to the fact that it was not filed within the prescribed time. The Defendants' counsel submitted relying on the Federal Court case of **Syarikat Kemajuan Timbermine v Kerajaan Negeri Kelantan [2015] 3 MLJ 609** that although the Plaintiff's case was unopposed, it cannot be presumed to be true.

[6] The counsel for the Defendants submitted that the double rental claimed by the Plaintiff pursuant to **section 28(4) of the Civil Law Act 1956** was not pleaded as it was not in the Statement of Claim and relied on the Court of Appeal decision in the case of **CIMB Islamic Bank Berhad v Saufi Taib & Ors [2015] 6 CLJ 897**. It is submitted that the cases referred by the Plaintiff's counsel, **HP Projects Sdn Bhd (supra)** and **JR Linkcs Educational (supra)** should be distinguished from the current case as in the two cases, the landlord specifically pleaded for double rental in their Statement of Claim.

## **Plaintiff's submission**

[7] Briefly, the Plaintiff's counsel submitted that the Plaintiff is the Landlord whereas the Defendants are the tenant in the Tenancy Agreement and it is not disputed that the Defendants breached the Tenancy Agreement and held the Plaintiff's premise until 8.12.2010 even after the Sessions Court's order. The Plaintiff's counsel further averred that there is a delay of 1,349 days after the end of tenancy on 31.3.2007 and 69 days after the Session Judge's Judgment of 1.10.2010.

[8] The Plaintiff's counsel submitted that the Defendants failed to comply with the requirements of **Order 49 rule 6 of Subordinate Court Rules 1980** where within three weeks after the filing of the Notice of Appeal, the Defendants must file the record of appeal in the High Court that shall contain copies of the application for decision, all pleadings filed, all affidavits in support of or in opposition to the application and the order or draft order of the decision appealed from. It is submitted that the Notice of Appeal is not in the Record of Appeal but there is a draft order of 1.10.2010.

[9] The Plaintiff's counsel averred that the failure of the Defendants to file the affidavit in reply and only after one month filed for leave for abridgement of time (pages 154 – 156 of Record of Appeal) to file for Affidavit in Reply which was then dismissed by the Session Judge, to which no appeal was filed, showed that the Defendants admitted to the Plaintiff's claim. The Plaintiff's counsel submitted that there is no appeal, however proceeded with the submission on merits.

[10] It is submitted that the Tenancy Agreement expired on 1.4.2007 (page 133 of Record of Appeal) where it was a request to extend by the Defendants but the Plaintiff being the landlord rejected for an extension which the material facts are as pleaded (pages 5 - 6 of Record of Appeal, paragraphs 9-10 of Statement of Claim). It is submitted that the Plaintiff issued a notice of demand for vacant possession and the due rental (dated 13.3.2009, page 136 of Record of Appeal).

[11] The Plaintiff's counsel argued that the rate RM360 per day is evident as in the Plaintiff's letter of demand (date 13.3.2009, page 137 Record of Appeal).

[12] In relation to the double rental claim, the counsel submitted that the law is provided under **section 28(4)(a) of Civil Law Act 1956** and it is at the option of the Plaintiff being the Landlord to invoke when the Defendants had only returned the Plaintiff's premise after 2 months. The counsel submitted that referring to the case of **Mohamed Abu Bakar S/O Yusof v PA Syed Aboothahir S/O Ahmed [1990] 1 MLJ 26**, where the High Court held that where an occupant has wrongfully held over the premise, the double rental is imposed from the date of accrual of the cause of action to the date of the possession handed over and also referred to the cases of **HP Projects Sdn Bhd v Investprop (M) Sdn Bhd [2005] 3 CLJ 851** and **JR Linkcs Educational Sdn Bhd v Goh & Son Enterprise [2008] 3 CLJ 815**. It is submitted that the calculation of double rental from 31.3.2007 until 8.12.2010 (1349 days) are RM93,901.76.

[13] The Plaintiff's counsel submitted that regarding the interests rate argued by the Defendants that it should not be claimed by the Plaintiff, it is submitted that following **Order 55 rule 14 of Rules of Court 2012** (ROC 2012) interests rate should be allowed. The Plaintiff's counsel prayed for the double rental of RM93,901.76 plus interests of RM66,580.20 and the cost accruing at RM5,362.00. It is further averred that if there was an appeal, it is the Defendants' own mistake for not pursuing the matter diligently.

## APPEAL

[14] Just a bit of a background following the Court's minutes of 9.10.2017. The case file for this case could not be found but was informed that a Stay was granted on 2.3.2011 pending disposal of the appeal to which the Court vide the Senior Assistant Registrar advised for the case file to be reconstructed. It was also in this Court's minutes that the record of appeal had been filed and parties proposed to go for mediation. On 22.11.2017, parties informed at case management that the Defendant will proceed with the appeal. On the next case management of 21.12.2017, the Defendants submitted the updated record of appeal to this Court and to the Plaintiff. This Court also finds that the said Judgment is produced in the Supplementary Record of Appeal (pages 1-2, dated 1.10.2010).

[15] The matter was heard before me on 17.4.2018 where I read out my decision with preliminary grounds on the same hearing day. My full ground follows. Based on the facts, I proceeded to hear the merits as this Court finds that the Defendants which proceeded with the appeal and applied for

a stay of execution that was granted in 2011 are responsible for the delay which is highly prejudicial to the Plaintiff.

[16] For an **Order 14 of ROC 2012** summary judgment, it is a procedure available to expedite the disposal of the Plaintiff's action and the burden is borne by the Plaintiff to establish a prima facie case. This suit is brought by Plaintiff. Following **section 101 of Evidence Act 1950** and the principle as enunciated by the Federal Court in the case of **Letchumanan Chettiar Alagappan @ L Allagappan (as executor to SL Alameloo Achi alias Sona Lena Alamelo Acho, deceased) & Anor v Secure Plantation Sdn Bhd [2017] 4 MLJ 697**, the burden of proof, on the balance of probabilities, rests with the Plaintiff and once the burden is discharged, the onus to prove then shifts to the Defendants.

[17] Reverting to the facts, the Tenancy Agreement provides for the agreed rental and upon expiry of the tenancy, the Defendants continued to hold the Plaintiff's property. The fact remains that the Plaintiff was denied the rental due since 2007 which was not disputed by the Defendants and proves to show that the Plaintiff had established a prima facie case. The burden then shifts to the Defendants to prove that the said Judgment ought not to be given to the Plaintiff.

[18] Based on the facts and evidence before this Court, this Court finds that upon the expiry of the Tenancy Agreement which was not renewed, the Defendants continued to hold the Plaintiff's premise without the consent of the Plaintiff and without rental payments. Following clause 1 of the

Tenancy Agreement (page 67 of Record of Appeal), the tenancy period agreed defined as the "Term" is of three years where upon expiry of the Term, the Defendants as the tenant, covenants "*..to yield up to the landlord the Demised Premises with the fixtures and fittings thereto in good and tenantable repair and condition, fair wear and tear excepted.*"

[19] The Plaintiff's pleaded claim for the amount due is based on the Tenancy Agreement in a Landlord and Tenant relationship where the Plaintiff is addressed as the Landlord (page 66, pages 72 - 73 of Record of Appeal) which a material fact pleaded in the Statement of Claim (pages 4-11 of Record of Appeal). The Plaintiff had pleaded for the delivery of vacant possession to which was not returned only until 8.12.2010.

[20] Following the Judgment given dated 1.10.2010, among ordered are that the rental charges allowed for RM250,000.00 is up to 12.3.2009 and the RM360.00 daily rate starts from 13.3.2009 until the date of vacant possession delivered to the Plaintiff. Following **section 28(4)(a) of the Civil Law Act 1956**, the language of the provision is clear and without ambiguous that the Plaintiff as the landlord is entitled in law for the double rental. The Defendants did not pursue the matter for many years to which the Plaintiff had to file a winding-up order, for the return of the rental charges owing and for the subsequent loss of rental charges. I therefore do not see that the Defendants' defence are of any merits.

Based on the foregoing, the appeal is dismissed with costs.

Dated: 21 December 2018

  
(ZALITA BINTI ZAIDAN)

Judicial Commissioner  
Shah Alam High Court

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